



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

May 29, 1973

**The Honorable Dolph Briscoe
Governor of the State of Texas
Executive Department
Austin, Texas 78711**

Letter Advisory No. 48

**Re: Exemption of certain
types of businesses
from franchise and
property taxes.**

Dear Governor Briscoe:

You have submitted to us House Bill No. 361 which has been adopted by both houses of the Legislature and presented to you for signature with the request that we give our opinion as to the constitutionality of § 3 of the Bill.

Section 3 provides:

"There is exempt from taxation all real and personal property used by a non-profit corporation organized for the purpose of providing a home primarily for retired teachers and which has no capital stock and which is dependent upon gifts and contributions for a significant proportion of its funding of debt incurred in the construction of such facility. "

The exemption of property from taxation is governed by § 2(a) of Article 8 of the Constitution of the State of Texas which provides that property devoted to certain specified uses may, by general law, be exempted from taxation and concludes: "And all laws exempting property from taxation other than the property mentioned in this Section shall be null and void. " Briefly, the categories of use which may permit property to be exempted are public property used for public purposes, actual places of religious worship, property owned by a church or a religious society for use as a dwelling place for its ministry (with certain limitations), places of burial not operated for profit, buildings used exclusively for school purposes, property used exclusively in promoting "religious,

educational and physical development" of young people (obviously directed at Y. M. C. A. 's and Y. W. C. A. 's), the endowment funds of such institutions not used for profit, and finally, "institutions of purely public charity."

Pursuant to the authority of § 2(a) of Article 8 of the Texas Constitution, the Legislature has enacted Article 7150 defining property exempt from taxation. Section 7, as amended most recently in 1969, defines public charities as:

"All buildings and personal property belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions, including hospital parking facilities, not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this Article is one which **dispenses** its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when funds, property and assets of such institutions are placed and bound by its law to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons"

In 1971 the Supreme Court decided City of Waco v. Texas Retired Teachers Residence Corporation, 464 S.W.2d 346 (Tex. 1971) holding that the Texas Retired Teachers Residence Corporation did not meet the requirements of § 7 of Article 7150 and therefore was not entitled to be exempt from taxation. In reaching that decision the Supreme Court

reviewed the evidence as to the operation of the residence corporation, the fees it charged, and stressed that no person was accepted during the years in question without regard to poverty or riches. No one was accepted in the residence who could not pay a minimum fee of \$115 per month and wealth played a part in the admission policy.

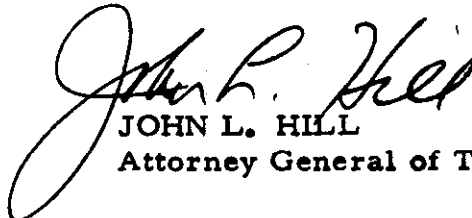
The express language of § 2(a) of Article 8 of the Constitution of Texas would permit the Legislature to exempt from taxation only property devoted to one of the uses described in that section. Any other law attempting to exempt property from taxation would be null and void.

Unless it would qualify as an institution of "purely public charity," a "non-profit corporation organized for the purpose of providing a home primarily for retired teachers" does not fall within any of the classes specified by § 2(a) of Article 8 and any attempt to exempt it from taxation would be null and void. Whether or not a particular use makes a purely public charity is a question of fact. It must meet some statutory exemption whether found in Article 7150, § 7, in House Bill 361, or some other statute and, at the same time, must in fact be a purely public charity.

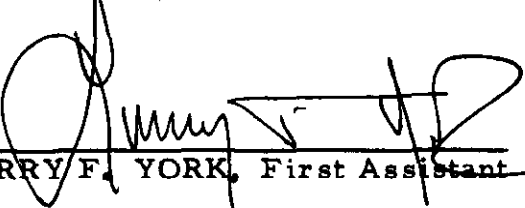
There are no hard and fast rules by which to identify a purely public charity. Section 7 of Article 7150 is, to a large extent, a codification of decisions of our courts. Nevertheless, it is possible that organizations not qualifying under that statute may be purely public charities under some other proper definition. We doubt, however, that the definition of § 3 of House Bill 361 is sufficient to establish that an organization meeting it is in fact entitled to the exemption. It would not seem impossible that non-charitable organizations might meet the tests of that definition.

It is our opinion that § 3 of House Bill 361 does not define a purely public charity and that any effort to secure tax exemption on that basis would be unconstitutional and void.

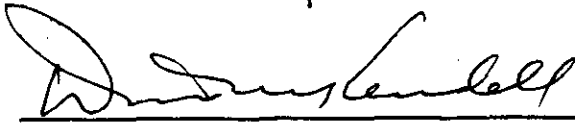
Very truly yours,


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APPROVED:



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